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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,504

06/06/2005

Robert Ungemach

M1269/20001

1298

3000

7590

08/24/2006

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EXAMINER

PETRIK, KARI KRISTEN

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/523,504	Applicant(s) UNGEMACH ET AL.	
	Examiner Kari Petrik	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/9/2006 has been entered. Claims 1-5 and 6-17 have been amended.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **U-shaped** frame must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier et al (US Patent 5,702,406) in view of Hauger et al (US Patent 5,775,337).

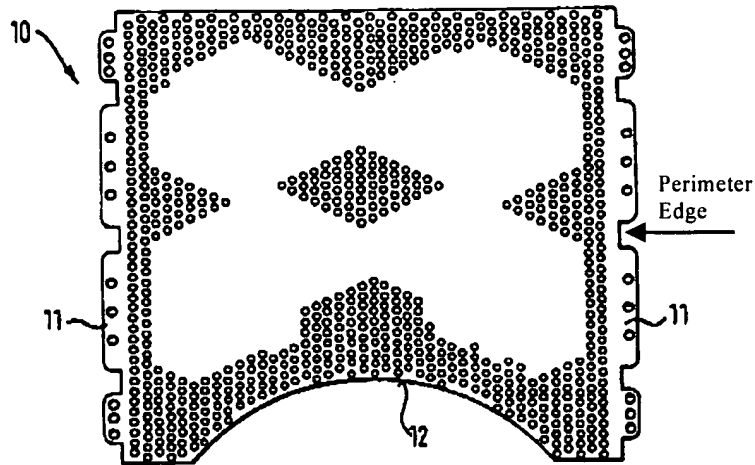
6. Regarding claims 1 and 10, Vilsmeier et al disclose a patient restraint member comprising an integral, one-piece sheet of thermoplastic material (10) having spaced apart groups of perforations and solid bands extending between the groups of

perforations and extending at least partially across the sheet (Figure 1A). The sheet has a perimeter edge (see Figure below) lying in a common plane and is free of additional strips of material (sheet 10 itself is free of additional strips and is capable of being used alone to restrain the user). Vilsmeier et al discloses a generally planar frame (31) arranged to be attached to and extending around a portion of the perimeter edge of the sheet and being coplanar with the perimeter edge. Vilsmeier does not disclose that the frame is U-shaped.

Hauger et al discloses a U-shaped frame (18) being coplanar with and extending around the edge of the sheet to secure the thermoplastic sheet in place on a patient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the thermoplastic sheet and frame disclosed by Vilsmeier et al having a U-shaped frame, as taught by Hauger et al, so that the sheet is further secured around the top of the patient's head.

7. Regarding claims 2-8 and 11-16, Vilsmeier et al discloses a thermoplastic sheet (10) having groups of perforations and solid bands extending across the sheet between the groups of perforations to provide rigidity (Figure 1A). The solid bands criss-cross the sheet and intersect at a location spaced inwardly from the edge. Vilsmeier et al also discloses a thermoplastic sheet having a non-perforated edge (the arrow in Figure 1A below is considered a non-perforated edge). Vilsmeier et al do not disclose that the solid bands extend completely across the sheet, and do not disclose that they extend in a perpendicular or non-perpendicular angle from the perimeter edge.

FIG. 1A



However, a thorough reading of the specification provides no criticality to the arrangement of the bands. Specifically, Applicant has not disclosed that having bands that extend from the perimeter edge at a perpendicular angle or non-perpendicular angle provides an advantage over bands extending through the sheet at any other angle.

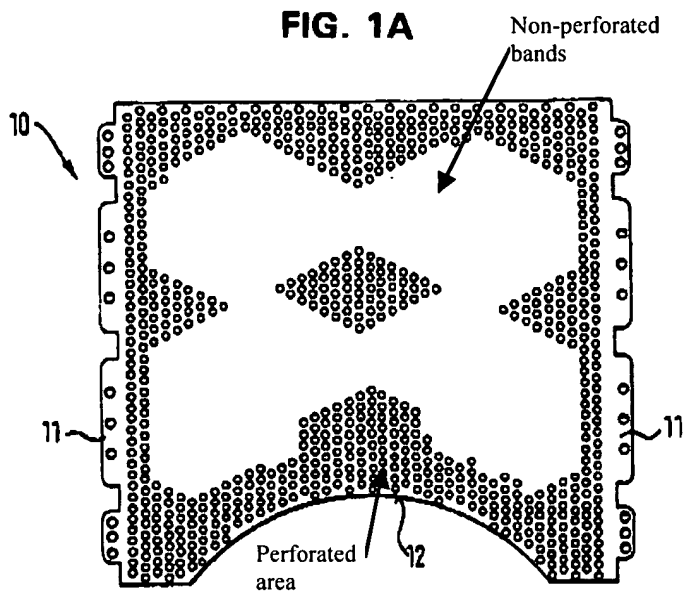
At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the thermoplastic sheet with the various solid band configurations, because Applicant has not disclosed that such configurations provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Vilsmeier et al.'s thermoplastic sheet and Applicant's invention to perform equally well with either the solid bands used by Vilsmeier et al, or the various claimed designs of solid bands and perforations because both configurations would perform the same function of providing rigidity.

Therefore, it would have been *prima facie* obvious to modify Vilsmeier et al to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Vilsmeier et al.

Response to Arguments

8. Applicant's arguments filed 8/9/2006 regarding the thermoplastic sheet have been fully considered but they are not persuasive. The Applicant argues that the Vilsmeier patent does not meet the claim limitation of a single layer sheet. The examiner disagrees because the reference does show a single layer sheet member that is free of additional strips (10, Figure 1A). The sheet itself is a single layer and does not have additional strips and is fully capable of being used as the restraint member, a single layer.

9. The Applicant argues that the Examiner's interpretation of Figure 1A is incorrect in that the non-perforated areas shown are merely a drawing convention so that the draftsman need not draw the holes across the entire area of the sheet. The Examiner spoke with Joshua Chase at the USPTO Drafting Review Branch who stated that this is not a drawing convention, and that the figure does show a sheet having a perforated area and a non-perforated area.



10. The examiner directs the Applicant to MPEP § 2125. Specifically, “When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawing must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art”. Even though the non-perforated area is not described in the specification, the figure clearly shows the sheet having a perforated area and a solid non-perforated area, and therefore, it can be used as prior art.

Conclusion

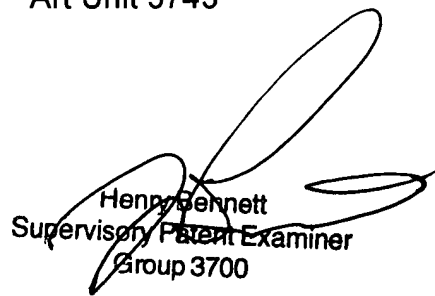
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is 571-272-8057. The examiner can normally be reached on M-Th 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kari Petrik
Examiner
Art Unit 3743

KKP



Henry Bennett
Supervisory Patent Examiner
Group 3700